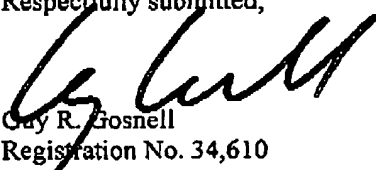
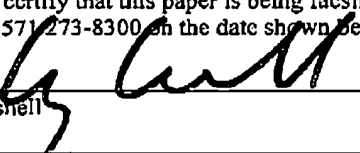


PRE-APPEAL BRIEF REQUEST FOR REVIEW (filed with the Notice of Appeal)		Docket Number 047802/263904
Application Number: 09/662,398	Filed September: 14, 2000	
First Named Inventor: Harris, William F.		
Art Unit: 3625	Examiner: Shah, Amce A.	
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s).</p> <p>Note: No more than five (5) pages may be provided.</p> <p>Attachment: Remarks (four (4) pages)</p> <p>Respectfully submitted,</p> <p> Guy R. Gosnell Registration No. 34,610</p> <p>Date <u>November 14, 2005</u></p> <p>Customer No. 00826 ALSTON & BIRD LLP Bank of America Plaza 101 South Tryon Street, Suite 4000 Charlotte, NC 28280-4000 Tel Charlotte Office (704) 444-1000 Fax Charlotte Office (704) 444-1111</p>		
<div style="border: 1px solid black; padding: 10px;"><p style="text-align: center;">CERTIFICATION OF FACSIMILE TRANSMISSION</p><p>I hereby certify that this paper is being facsimile transmitted to the US Patent and Trademark Office at Fax No. 571-273-8300 on the date shown below.</p><p> Date <u>Nov. 14, 2005</u></p><p>Guy Gosnell</p></div>		

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REMARKS

This communication is filed in response to the final Official Action of May 12, 2005. The final Official Action continues to reject Claims 58-76 under 35 U.S.C. § 102(b) as being anticipated by U.S. Published Application No. 2002/0072984 to Rothman et al. In rejecting the claims, the final Official Action gives little patentable weight to a number of functional recitations. As described in the prior Amendment, however, the functional recitations should be given patentable weight. See MPEP §2173.05(g). Indeed, the functional recitations further define positively recited elements of the claimed invention and do not merely set forth an intended use as contended by the final Official Action. In this regard, the case law relied upon by the final paragraph on page 2 of the final Official Action for the proposition that recitations of intended use should be given little patentable weight is misplaced as those cases, as well as the context of that paragraph itself, relate to preamble statements of intended use, as opposed to the definition of elements of the claimed invention in terms of their functionality in the body of a claim itself. As such, Applicants respectfully submit that the functional recitations should be given patentable weight and that the claimed invention is patentably distinct from the Rothman publication. Thus, Applicant respectfully requests reconsideration and reversal of the rejection.

With reference to the claimed invention, the server system of one embodiment permits customers to submit orders for a product over a public access network directly to a manufacturer, while processing and accounting for the orders in such a manner as to permit the established distributor(s) and/or manufacturer representative(s) of the manufacturer who are not otherwise involved in the generation of the customer's order to profit from the transaction, generally in much the same manner as if the distributor had generated the order. As such, the server system provides another marketing and sales channel for a manufacturer, while maintaining the goodwill and cooperation of established distributors and manufacturer representatives who work with the manufacturer in the more traditional marketing and sales channels.

As recited by the claimed invention, the server system and, in particular, a receiver component receives requests to order a product that include a product code identifying the product and a customer identification identifying the customer. As set forth by independent Claims 58 and 70, the receiver component receives the requests (that are submitted by a customer) on behalf of the manufacturer. The server system also includes a data storage medium

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for storing information regarding the products that are for sale, including the price associated with each of the products. Typically, this pricing information is at least partially provided by the distributors such that the price for the same item may vary from distributor to distributor.

Although the order was placed with the manufacturer in a manner that was independent of the typical distribution chain, the server system notifies one of the established distributors for the manufacturer, such as the distributor who likely would have received the order if the order had been placed through conventional channels, and requests that the distributor provide financial authorization for the sale of the product to the customer. In this regard, many customers have customer accounts with one or more distributors which are relied upon by the server system of this embodiment to finance the purchase of a product by the customer. As such, the server system and, in particular, the receiver component not only receives requests from a customer to order a product, but also financial authorization from a distributor that verifies the customer's account. As recited by independent Claim 58, even though the distributor was not involved in the generation of the order of the product as in conventional sales activities, the server system of the claimed invention still looks to the distributor to provide financial authorization for the transaction, such as by providing the manufacturer with a purchase order number. In return, the distributor will profit from the sale of the product to the customer.

Once authorized, the server system and, in particular, an order placement component places an order with the manufacturer for the product identified by the request. The server system also includes an order fulfillment component that completes the purchase of the product. As recited by independent Claim 58, the order fulfillment component makes arrangement for shipping by the manufacturer and billing of the distributor. Although the manufacturer ships the product, the distributor is billed for the product. Thus, the server system operates with the customer remaining a customer of the distributor, even though the request is received on behalf of the manufacturer and even though the product is thereafter shipped by the manufacturer.

In one advantageous embodiment set forth by independent Claim 70, the server system also compensates an agent, such as a manufacturer representative, for the sale of the product to the customer, even though the agent was not involved in the generation of the order. In this regard, the data storage medium of independent Claim 70 also includes agent information having at least one predetermined variable associated with each of the agents. In addition, the server

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system of Claim 70 includes a commission component that determines a commission and assigns the commission to one of the agents based on a predetermined variable. For example, the variables may relate to the territory covered by the respective agents such that the commission component assigns a commission to the agent who covers the territory that includes the location of the customer. As recited by independent Claim 70, the commission component compensates the agent, even though that agent was not involved in the generation of the order and even though the request was fulfilled in a manner independent of the agent. Thus, the server system does not disaffanchise the agents, such as manufacturer representatives, such that the agents will remain loyal to the manufacturer during more conventional sales activities.

The cited reference also describes a method and apparatus for the distribution and sale of a brand of product via a seller's website. In this regard, the seller of a brand of product may maintain a website through which product availability and pricing information may be obtained and through which orders may be placed. Depending upon whether a purchase is online or offline, the purchase may be handled differently. If the product is purchased online, the purchaser is prompted to enter an address to which the product is to be shipped and the purchaser provides a payment for the product, such as by means of a credit card. The online delivery may then be completed by either the operator of the central server or one of the local distributors. See Paragraph 75 of the Rothman application. Alternatively, in an offline purchase, the purchaser either may pay for the product via the website, such as by means of the credit card, or may directly pay the distributor when the purchaser is picking up the product from the distributor.

In contrast to the Rothman application, the server system of independent Claim 58 includes a receiver component for receiving financial authorization from a distributor. Independent Claim 58 further defines the financial authorization to include an acknowledgment from the distributor verifying a customer account even though the request is received by the receiver component in a manner independent of the distributor. Thus, the server system of independent Claim 58 relies upon the distributor to provide financial authorization for the proposed transaction. Additionally, the server system of independent Claim 58 includes an order fulfillment component that completes a purchase of the product by making arrangements for shipping by the manufacturer and billing of the distributor. While the Rothman application contemplates shipping by the operator of the central server, such as a manufacturer, the Rothman

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application does not teach or suggest a receiver component for receiving financial authorization from a distributor or an order fulfillment component for billing the distributor. In fact, in the instance in which the delivery is completed by the operator of the central server, such as the manufacturer, the purchaser pays for the product at the time that the product is ordered, such as by means of a credit card. Thus, not only does the Rothman '984 application not teach or suggest a receiver component for receiving financial authorization from a distributor, but there is no reason to receive any type of financial authorization from a distributor since the purchaser must pay for the product in conjunction with its initial order and the distributor is not being looked to for any type of payment approval or the like. Additionally, the Rothman application does not teach or suggest an order fulfillment component that permits billing of the distributor. In fact, the Rothman application does not teach or suggest billing of a distributor in any scenario including that in which the manufacturer ships the product as recited by independent Claim 58.

Independent Claim 70 also describes a server system for generating order for a product which includes a commission component that determines a commission and assigns a commission to one of many agents even though the requests is fulfilled in a manner independent of the agents. The majority of the Rothman application describes instances in which a distributor is involved in the purchase and/or delivery of the product. However, the Rothman application does describe one scenario in which an order is fulfilled independent of the distributors. In this regard, an online purchase may be made in which delivery is completed by the operator of the central server, such as the manufacturer. As such, the sale of the product may be consummated and fulfilled independent of the distributor. However, the Rothman application does not teach or suggest that any distributor would receive a commission based upon this sale and fulfillment that were completed independent of the distributor as contemplated by independent Claim 70. In fact, the Rothman application only discusses payment of the distributor in situations in which the distributor is involved in the actual sale and/or delivery of the product.

For each of the foregoing reasons, Applicant submits that independent Claims 58 and 70, as well as the claims that depend therefrom, are not taught or suggested by the cited reference. Thus, Applicant respectfully requests that the rejection of Claims 58-76 under 35 U.S.C. § 102(e) as being anticipated by the Rothman application be reversed.